

## REMARKS/ARGUMENTS

Claims 1-3 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter asserting that “the method claims do not produce a useful, tangible and concrete result or product.” It is respectfully submitted that this rejection lacks merit. The pending claims have pass muster under any of the various interpretations of 35 U.S.C. § 101 that have been made over the years. "Congress intended statutory subject matter to 'include anything under the sun that is made by man.'" Diamond v. Chakrabarty, 447 U.S. 303 (1980)

The pending claims are a particular way of operating a plural component sequential metering system for dispensing materials having at least first and second components and adjusting the dose size to produce an improved result, namely, an optimum dose size. The USPTO's own memo entitled Clarification of Processes Under 35 U.S.C. 101, dated May 15th, 2008 sets forth “the threshold question for process claims: A process under 35 U.S.C. 101 must: \* be tied to another statutory class (such as a particular apparatus) or \* transform underlying subject matter (such as an article or materials) to a different state or thing.” Clearly, the instant claims are tied to a statutory apparatus and also transform the materials being dispensed into a different state (size dose) than started with.

It is respectfully submitted that the drawings do show what is claimed. The phrases “increasing said dose size when the number of doses falling outside said predetermined tolerance exceeds a predetermined level” and “decreasing said dose size when the number of doses falling outside said predetermined tolerance is within a predetermined level” are shown in figure 1 as for example, the flow charts boxes containing “are more than 98% of well within tolerance” and “are

Appl.No. 10/599,090  
Amdt.dated December 5, 2008  
Reply to Office action of September 10, 2008

less than 98% of well within tolerance”. The drawings were of course as originally filed so there can be no new matter. In any event, an additional paragraph has been inserted into the specification which ties together the language of the flow chart of Figure 1 and the claim language. In the event this disclosure is not deemed sufficient, the Examiner is respectfully requested to indicate in detail why such is not sufficient. There are no reference characters/numerals in the flow chart and hence there can be no failure to reference in the specification. The specification does refer to portions of the flow chart. A flow chart, while a drawing, is a textual description is Applicants’ invention and thus forms part of the specification. Copying material from one portion of the original filing (drawings, specification body or claims) to another part cannot constitute new matter. Accordingly, it is believed to be compliant.

Claims 1-3 stand rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. As set forth above, the claim language draws directly from the written materials in the flow chart of claim 1 and hence are amply described.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

/dbf/

Douglas B. Farrow  
Registration No. 28582  
Graco Inc.  
PO Box 1441  
Minneapolis, MN 55440  
(612) 623-6769  
pto@graco.com